

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC., :
: ;
Plaintiff, : CIVIL ACTION NO. 3:07-cv-01600-ARC
: ;
v. : Judge Caputo
: ;
LEACHCO, INC., :
: ;
Defendant :

RULE 56.1 STATEMENT

Plaintiff/Counterclaim Defendant, Babyage.com, Inc. ("Babyage.com"), through undersigned counsel, herewith submits its Rule 56.1 Statement in connection with its Motion for Partial Summary Judgment with respect to the counterclaims of Defendant/Counterclaim Plaintiff Leachco, Inc. ("Leachco").

1. Leachco is the exclusive licensee of U.S. Patent No. 6,760,934 ("the '934 Patent"). (Counterclaim ¶ 8.)
2. The '934 Patent is comprised of one independent claim and two dependent claims. U.S. Patent No. 6,760,934.
3. The independent claim of the '934 Patent requires, in pertinent part, that the device embody "[a] symmetrically contoured support pillow formed essentially in an inverted U-shape, comprising essentially a semi-circular crown." U.S. Patent No. 6,760,934.
4. The Court conclusively resolved that "[t]he semi-circular crown means the top of the pillow is shaped like a semi-circle." (Mem. Op. 09/18/2008 at 8.)

5. The upper portion or "crown" of the accused device (Ex. C of the Complaint), is not semicircular. (Compl. Ex. C.)

6. Babyage.com sells baby-related goods by means of a Website having the web address www.babyage.com. (Counterclaim ¶ 20.)

7. All of the goods that are displayed, identified, and offered for sale at http://www.babyage.com/brands/leachco.htm ("the Website") as originating from Leachco are genuine and authentic products manufactured by or for Leachco. (Counterclaim ¶ 22.)

8. Each and every link at the Website to a product using Leachco's trademark also has a link that reads as follows: "See More Leachco Products." (Decl. of John M. Kiefer Jr.)¹

9. Babyage.com has never displayed or otherwise used Leachco's trademarks, except as alleged in the counterclaim. (Counterclaim ¶ 21; Decl. of John M. Kiefer Jr.)

10. There are no instances in which any goods displayed and offered for sale on the Website and identified as having been manufactured by or for Leachco have been represented as having been manufactured for or by any other manufacturer or seller of those products. (Counterclaim ¶ 22.)

11. There are no instances in which any goods displayed and offered for sale on the Website and identified as having been manufactured by or for a manufacturer or seller other than Leachco have been represented as having been manufactured for or by Leachco. (Counterclaim ¶ 22.)

12. Leachco's trademark is used on the Website only to identify goods manufactured for or by Leachco. (Counterclaim ¶ 22; Decl. of John M. Kiefer Jr.)

¹The Declaration of Mr. Kiefer will be filed contemporaneously with the memorandum in support of the relief sought hereby.

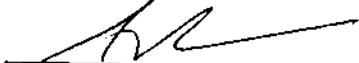
13. There are no instances where consumers have mistakenly confused the origin or source of goods manufactured for or on behalf of Leachco as having been manufactured for or on behalf of Babyage.com. (Counterclaim ¶ 22; Declaration of John M. Kiefer Jr.)

14. There are no instances where consumers have mistakenly confused the origin or source of goods manufactured for or on behalf of Babyage.com as having been manufactured for or on behalf of Leachco. (Counterclaim ¶ 22; Decl. of John M. Kiefer Jr.)

15. None of the linked web pages to which Leachco refers in ¶ 22 represent that goods manufactured or sold by competitors of Leachco are manufactured or sold by Leachco. (Counterclaim ¶ 22; Decl. of John M. Kiefer Jr.)

16. None of the linked web pages to which Leachco refers in ¶ 22 represent that goods manufactured or sold by Leachco are manufactured or sold by competitors of Leachco. (Counterclaim ¶ 22; Decl. of John M. Kiefer Jr.)

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, ANDREW J. KATSOCK III, do hereby certify that copies of the foregoing document was served on all opposing counsel this 26th day of September 2008, by mailing one to each of them, first-class postage prepaid, at the following addressees:

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